IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1205 OF 2005

Pandurang Hari Salunkhe ... Appellant (Ori.Defendant)

V/s

Bandu Bhagoji Kumbhar ... Respondent (Ori.Plaintiff)

Mr. C. N. Chavan for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 5TH OCT., 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Karad, Dist. Satara, dated 8.7.2005, dismissing the appeal and confirming the judgment and order passed by the Civil Judge, J.D., Patan dated 21.11.2000, whereby the suit was decreed with direction to the defendant to remove the gobar gas plant from Gat No.52 to the extent of 14 sq.mtrs. as mentioned in map Exh.82 with further direction to hand over the possession of the land that was encroached by the defendant which was shown in red ink as shown in the map Exh.82.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit submitting that he owns and possesses land consisting of land of 1 Are having house which is numbered at Grampanchayat property No.221. On eastern side of the said land there is a Grampanchayat road and on the western side there is a land owned by the plaintiff and defendant. In south side, the land owned by the defendant is located. According to the plaintiff, he was having a shed on the western side which was in dilapidated condition and, therefore, the plaintiff had demolished the said shed. However, taking advantage of the said demolition, the defendant installed a gobar gas plant by encroaching on plaintiff's land from the western side. It is the case of the plaintiff that when a ditch was dug for the purpose of installation of gobar gas plant, plaintiff had obstructed. However, during the pendency of the suit defendants installed the plant and, therefore, plaintiff was required to amend the plaint seeking relief of mandatory injunction also.

Defendant contested the suit inter-alia denying all the

allegations made by the plaintiff stating that he has not encroached upon the property of the plaintiff and, as such, the suit was sought to be dismissed.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved his title over the suit propertyl and the fact that the defendant had encroached upon his land and constructed the gobar gas plant over the property of the plaintiff and, therefore, the suit for mandatory injunction and consequential relief of possession was decreed.

The appeal was carried to the District Court at Karad, Dist. Satara. The learned Addl. District Judge, after hearing both parties, came to the conclusion that the concurrent findings recorded by the learned Trial Judge were just and proper and dismissed the appeal. Hence the present appeal.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant submitted that the plaintiff had not complied with the provision of Order 7 Rule 3 of C.P.C. by not providing

the map or sketch of the alleged encroachment made by the defendant and, therefore, the suit was liable to be dismissed on that count alone. However, it is to be noted that, in order to ascertain the correct position, the learned Trial Judge appears to have appointed the Court Commissioner whose report is received and is part of the record vide Exh.82. Admittedly against, apart from the oral evidence, the surveyor who was the Court Commissioner appointed by the Court, has deposed in support of the plaintiff's case. The evidence of surveyor is at Exh.81 which shows that the plaintiff's case of encroachment was established. The land had been surveyed on 24.3.1998 and the surveyor had taken measurement as per the map which was prepared by the T.I.L.R. On the basis of block map and Phalani notes preserved in the office, surveyor deposed that the map on record had been prepared by him as per the actual situation and he had marked the boundaries of the encroachment as per the map Exh.82. Suffice to say, therefore, that both the Courts below have relied upon the Court Commissioner's map which in clear terms shows that the defendant has encroached upon the property of the plaintiff and has constructed gobar gas plant.

6. It was submitted on behalf of the appellant that the

plaintiff has mentioned in his plaint that the gobar gas plant pit was of the diameter of only 5 ft., however, the Trial Court has decreed that the gobar gas plant was to the extent of 14 sq.mtrs and total encroachment was held as 24 sq.mtrs. However, it is to be noted that it is the case of the plaintiff that initially the pit for gobar gas plant was of the diameter of 5 ft. but that does not mean that the entire plant was of the diameter of 5 ft. only. Therefore, accepting the evidence on record of both the Courts, I come lto the conclusion that the plaintiff has proved his case for mandatory injunction as prayed for. The concurrent findings recorded by both the Courts below appear to have been recorded on the basis of evidence which is seen to be properly appreciated and, therefore, it would brook no interference.

7. In the result, the appeal stands dismissed with no order as to costs. Consequently, Civil Application No. 1673 of 2005 also stands dismissed with no order as to costs.

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